

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MWK RECRUITING, INC,

Plaintiff

v.

**EVAN P. JOWERS, YULIYA
VINOKUROVA, LEGIS
VENTURES (HK) COMPANY
LIMITED, AND ALEJANDRO
VARGAS,**

Defendants

Case No. 1:18-cv-00444-RP

EVAN P. JOWERS,

Counterclaimant

v.

**MWK RECRUITING, INC.,
ROBERT E. KINNEY,
MICHELLE W. KINNEY,
RECRUITING PARTNERS GP, INC.,
KINNEY RECRUITING LLC,
COUNSEL UNLIMITED LLC, and KINNEY
RECRUITING LIMITED,**

Counterdefendants

**NOTICE OF COMMUNICATIONS BETWEEN COUNSEL REGARDING JOWERS'S MOTION
FOR PROTECTIVE ORDER**

In light of the Court's setting for Friday, May 1, 2020, attached is a record of correspondence between the parties regarding Jowers's Motion for Protective Order prior to and immediately after it was filed on April 24, 2020. Prior to filing this Notice, counsel for Plaintiff notified counsel for Jowers of the intent to file this set of correspondence as a notice to the Court and asked them to identify any additional relevant documents. They identified none.

Dated: April 28, 2020

Respectfully Submitted

/s/ Robert E. Kinney

Robert E. Kinney

Texas State Bar No. 00796888

Robert@KinneyRecruiting.com

Robert E. Kinney

Attorney at Law

824 West 10th Street, Suite 200

Austin, Texas 78701

Tel: (512) 636-1395

Raymond W. Mort, III

Texas State Bar No. 00791308

raymort@austinlaw.com

THE MORT LAW FIRM, PLLC

100 Congress Ave, Suite 2000

Austin, Texas 78701

Tel/Fax: (512) 865-7950

**ATTORNEYS FOR PLAINTIFF MWK AND FOR
COUNTER-DEFENDANTS KINNEY, MICHELLE
W. KINNEY, RP GP, KR LLC, CU LLC, AND
KINNEY RECRUITING HK**

CORRESPONDENCE

APRIL 24-25, 2020



Robert Kinney <robert@kinneyrecruiting.com>

Kinney/Jowers - Conference regarding motion for protective order/motion to quash

1 message

Bernardo, Micala <micala.bernardo@dlapiper.com>

Fri, Apr 24, 2020 at 3:14 PM

To: Robert Kinney <robert@kinneyrecruiting.com>

Cc: "raymort@austinlaw.com" <raymort@austinlaw.com>, Tristan Loanzon <tristan@loanzon.com>, "Bookhout, James" <james.bookhout@dlapiper.com>

Counsel: Attached please find a draft copy of Defendant's Motion for Protective Order and Motion to Quash Third Party Subpoenas, which Defendant intends to file later today. Please let us know if the Kinney parties are opposed to the relief sought in this motion.

Sincerely,

Micala

Micala R. Bernardo

Senior Attorney

T +1 214.743.4561

F +1 971.813.6261

E micala.bernardo@dlapiper.com



DLA Piper LLP (US)
1717 Main Street, Suite 4600
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The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to postmaster@dlapiper.com. Thank you.

**Jowers_Kinney - Motion for Protection and_or Motion to Quash Third Party Subpoenas.DOCX**

38K



Robert Kinney <robert@kinneyrecruiting.com>

Re: Kinney/Jowers - Conference regarding motion for protective order/motion to quash

1 message

Robert Kinney <robert@kinneyrecruiting.com>

Fri, Apr 24, 2020 at 4:39 PM

To: "Bernardo, Micala" <micala.bernardo@dlapiper.com>

Cc: "raymort@austinlaw.com" <raymort@austinlaw.com>, Tristan Loanzon <tristan@loanzon.com>, "Bookhout, James" <james.bookhout@dlapiper.com>, "Katz, Marc" <Marc.Katz@dlapiper.com>

Micala,

You have never given us notice of your concerns on these issues so I didn't have any idea you were planning to file a motion to quash. I have been on calls and am tied up for the rest of this afternoon, but how about a call with counsel of record on Monday or Tuesday to discuss these issues related to the manner and timing of production of documents and what privileges you are asserting (if any)? I'm sure that there is a solution that will work for any third party to limit the burden (email, or pre-paid FedEx/courier pickup, etc.); if there's a valid basis for an assertion of privilege we should be able to agree about it.

Also, we have gotten nothing yet from Jowers, so we also want to discuss how we can know that we will get copies of these documents we are entitled to without Jowers's cooperation or third party help. We should also go over why Jowers has not produced them already himself, including the documents we already obtained from third parties. Perhaps we can get somewhere and avoid heaping more paper on the Court regarding issues we really should be able to work out amongst ourselves.

Have a nice weekend.

Robert

Robert E. Kinney, Esq.
Kinney Recruiting LLC

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Robert@KinneyRecruiting.com

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On Fri, Apr 24, 2020 at 3:15 PM Bernardo, Micala <micala.bernardo@dlapiper.com> wrote:

Counsel: Attached please find a draft copy of Defendant's Motion for Protective Order and Motion to Quash Third Party Subpoenas, which Defendant intends to file later today. Please let us know if the Kinney parties are opposed to the relief sought in this motion.

Sincerely,

Micala



Robert Kinney <robert@kinneyrecruiting.com>

Dkt 165 - Motion for Protective Order

1 message

Robert Kinney <robert@kinneypc.com>

Fri, Apr 24, 2020 at 6:07 PM

To: "Bookhout, James" <james.bookhout@dlapiper.com>, "Katz, Marc" <Marc.Katz@dlapiper.com>

Cc: Ray Mort <raymort@austinlaw.com>, Tristan Loanzon <tristan@loanzon.com>, "Bernardo, Micala" <micala.bernardo@dlapiper.com>

James,

The filing under your name of Dkt 165 violated Local Rule CV-7(i). Perhaps you are not aware, but we did not meet and confer with anyone at DLA about this motion. Micala's certification that we had met and conferred was a blatant misrepresentation of what I said in my email back to her this afternoon. A copy is attached.

To summarize, I requested an actual meeting and conference on the issues the motion raised and asked when you could talk on Monday or Tuesday. Filing a certificate of conference like Micala just did borders on bad faith.

I demand that you notify the Court that we had not met and conferred and that my position was misstated in the certificate of conference. Further, I demand that you withdraw the motion until we have met and conferred on the issue, when and if we come to an impasse.

Please let me know immediately whether you will do as requested; otherwise, we are going to proceed with preparing an emergency motion to strike. To that end, I request a meeting and conference on this issue so that we can properly comply with Local Rule CV-7(i). I'm available Monday or Tuesday pretty much any time as I said in my prior email.

All this time wastage could be resolved if your client would just comply with the rules and produce the documents we are entitled to.

Robert

Robert E. Kinney, Esq.
Attorney at Law
Mobile: +1-512-636-1395

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email re Motion to Quash.pdf

115K



Robert Kinney <robert@kinneyrecruiting.com>

RE: Dkt 165 - Motion for Protective Order

1 message

Bernardo, Micala <micala.bernardo@dlapiper.com>

Fri, Apr 24, 2020 at 8:24 PM

To: Robert Kinney <robert@kinneypc.com>, "Bookhout, James" <james.bookhout@dlapiper.com>, "Katz, Marc" <marc.katz@dlapiper.com>

Cc: "raymort@austinlaw.com" <raymort@austinlaw.com>, Tristan Loanzon <tristan@loanzon.com>

Robert:

Your statement that DLA did not meet and confer with you about the issues raised in the motion is knowingly false. We have notified you of this procedural defect and your repeated failure to comply with the geographic limits set forth in Federal Rule of Civil Procedure 45 multiple times, including but not limited to: (1) in January 2020 when we were specially retained by Legis Ventures to object and respond to the defective subpoena you improperly tried to serve in New York; (2) in Defendant's response to the Kinney Parties' motion for alternate service of subpoena on Legis Ventures, to which you filed a reply; (3) on April 9, 2020 in email correspondence with James Bookhout, to which you responded that you believed you had complied with the rules "to a T," and (4) today, when we sent you the draft motion prior to filing. Kirkland and Ellis similarly alerted you to this procedural defect in the firm's motion for protection.

The issue raised in the motion is a discrete issue which has been brought to your attention on at least five occasions, and yet you have failed to correct the facial defect with respect to the subpoenas at issue. In fact, you have intentionally and knowingly ignored it, and instead continued to engage in improper discovery tactics. Even now, you are implausibly alleging that you have not had notice of this issue, when you've actually had notice on five separate occasions.

As I said in my prior email this evening, if you are willing to withdraw the improper subpoenas, then we will withdraw Defendant's motion for protection. That is the only issue raised in our motion.

Sincerely,

Micala

Micala R. Bernardo

Senior Attorney

T +1 214.743.4561

F +1 971.813.6261

E micala.bernardo@dlapiper.com



Robert Kinney <robert@kinneyrecruiting.com>

Re: Dkt 165 - Motion for Protective Order

1 message

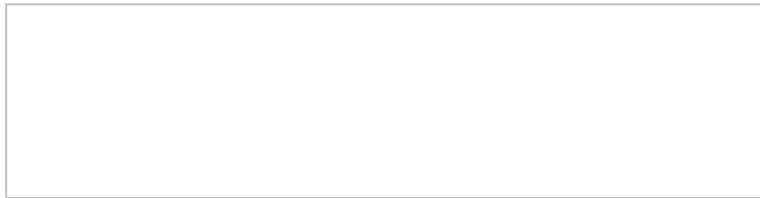
Robert Kinney <robert@kinneypc.com>

Sat, Apr 25, 2020 at 6:27 AM

To: "Bernardo, Micala" <micala.bernardo@dlapiper.com>Cc: "Bookhout, James" <james.bookhout@dlapiper.com>, "Katz, Marc" <marc.katz@dlapiper.com>, Robert Kinney <robert@kinneypc.com>, Tristan Loanzon <tristan@loanzon.com>, "raymort@austinlaw.com" <raymort@austinlaw.com>

Micala,

Your certification states you conferred with me yesterday via email. It then states that I said in this conference that I opposed the motion. Can you please identify the email correspondence that you reference where I stated I was opposed?



I understand that you believe your motion has merit and we would have been opposed had you followed the rule and conferred with me. That is neither the issue nor the standard. You need to withdraw the motion and correct this problem.

Robert

On Fri, Apr 24, 2020 at 20:24 Bernardo, Micala <micala.bernardo@dlapiper.com> wrote:

Robert:

Your statement that DLA did not meet and confer with you about the issues raised in the motion is knowingly false. We have notified you of this procedural defect and your repeated failure to comply with the geographic limits set forth in Federal Rule of Civil Procedure 45 multiple times, including but not limited to: (1) in January 2020 when we were specially retained by Legis Ventures to object and respond to the defective subpoena you improperly tried to serve in New York; (2) in Defendant's response to the Kinney Parties' motion for alternate service of subpoena on Legis Ventures, to which you filed a reply; (3) on April 9, 2020 in email correspondence with James Bookhout, to which you responded that you believed you had complied with the rules "to a T," and (4) today, when we sent you the draft motion prior to filing. Kirkland and Ellis similarly alerted you to this procedural defect in the firm's motion for protection.

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As I said in my prior email this evening, if you are willing to withdraw the improper subpoenas, then we will withdraw Defendant's motion for protection. That is the only issue raised in our motion.

Robert Kinney <robert@kinneyrecruiting.com>

Re: Dkt 165 - Motion for Protective Order

1 message

Katz, Marc <marc.katz@dlapiper.com>

Sat, Apr 25, 2020 at 7:26 AM

To: Robert Kinney <robert@kinneypc.com>, "Bernardo, Micala" <micala.bernardo@dlapiper.com>Cc: "Bookhout, James" <james.bookhout@dlapiper.com>, Robert Kinney <robert@kinneypc.com>, Tristan Loanzon <tristan@loanzon.com>, "raymort@austinlaw.com" <raymort@austinlaw.com>

Robert:

Are you saying you are agreed to our motion? If not, we are proceeding as opposed.

Marc Katz
Office Managing Partner, Dallas
O – 214.743.4534
C – 214.683.9365
E– marc.katz@dlapiper.com

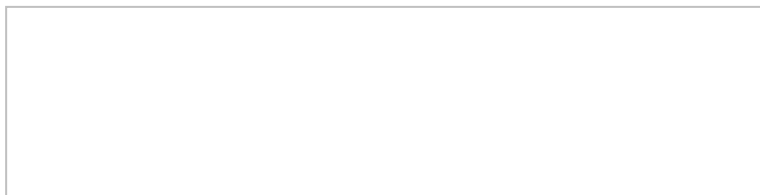
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dot.young@dlapiper.com
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[1900 Pearl Street, Suite 2200](#)
[Dallas, Texas 75201-4629](#)
United States
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From: Robert Kinney <robert@kinneypc.com>**Sent:** Saturday, April 25, 2020 6:27:51 AM**To:** Bernardo, Micala <Micala.Bernardo@us.dlapiper.com>**Cc:** Bookhout, James <James.Bookhout@us.dlapiper.com>; Katz, Marc <marc.katz@us.dlapiper.com>; Robert Kinney <robert@kinneypc.com>; Tristan Loanzon <tristan@loanzon.com>; raymort@austinlaw.com <raymort@austinlaw.com>**Subject:** Re: Dkt 165 - Motion for Protective Order

[EXTERNAL]

Micala,

Your certification states you conferred with me yesterday via email. It then states that I said in this conference that I opposed the motion. Can you please identify the email correspondence that you reference where I stated I was opposed?



Robert Kinney <robert@kinneyrecruiting.com>**Re: Dkt 165 - Motion for Protective Order**

1 message

Robert Kinney <robert@kinneypc.com>

Sat, Apr 25, 2020 at 7:42 AM

To: "Katz, Marc" <marc.katz@dlapiper.com>Cc: "Bernardo, Micala" <micala.bernardo@dlapiper.com>, "Bookhout, James" <james.bookhout@dlapiper.com>, Robert Kinney <robert@kinneypc.com>, Tristan Loanzon <tristan@loanzon.com>, "raymort@austinlaw.com" <raymort@austinlaw.com>

Marc:

The issue is that your filing certified to the court that we had conferred by email and that I said I was opposed. Do you think doing so was appropriate in light of what really happened?

Robert

CERTIFICATE OF CONFERENCE

I hereby certify that, on April 24, 2020, I conferred via email with Robert Kinney, counsel for Plaintiff MWK Recruiting, Inc. and all the Counter-Defendants, regarding the subject matter of this Motion, and he stated that he was opposed to the relief sought herein.

/s/ Micala R. Bernardo
Micala R. Bernardo

On Sat, Apr 25, 2020 at 07:26 Katz, Marc <marc.katz@dlapiper.com> wrote:

Robert:

Are you saying you are agreed to our motion? If not, we are proceeding as opposed.

Marc Katz
Office Managing Partner, Dallas
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Robert Kinney <robert@kinneyrecruiting.com>

Re: Dkt 165 - Motion for Protective Order

1 message

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Sat, Apr 25, 2020 at 7:47 AM

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We obviously disagree on that issue. However, if you are in agreement with our Motion we will amend it.

Marc Katz
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From: Robert Kinney <robert@kinneypc.com>**Sent:** Saturday, April 25, 2020 7:42:11 AM**To:** Katz, Marc <marc.katz@us.dlapiper.com>**Cc:** Bernardo, Micala <Micala.Bernardo@us.dlapiper.com>; Bookhout, James <James.Bookhout@us.dlapiper.com>; Robert Kinney <robert@kinneypc.com>; Tristan Loanzon <tristan@loanzon.com>; raymort@austinlaw.com <raymort@austinlaw.com>**Subject:** Re: Dkt 165 - Motion for Protective Order**[EXTERNAL]**

Marc:

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Re: Dkt 165 - Motion for Protective Order

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Marc:

I do not understand what you are saying. Please clarify:

- 1) whether you believe the certificate of conference was accurate; and
- 2) whether you will withdraw the motion pending a conference next week as I proposed.

Robert

On Sat, Apr 25, 2020 at 07:47 Katz, Marc <marc.katz@dlapiper.com> wrote:

We obviously disagree on that issue. However, if you are in agreement with our Motion we will amend it.

Marc Katz

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I believe my email was clear and we are not withdrawing our motion. If you do agree your subpoena has the defect with which we have a concern, and are willing to withdraw it and correct it, please let us know.

Have a great weekend.

Marc Katz
Office Managing Partner, Dallas
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